# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1922.

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## No. 371.

## THE UNITED STATES, APPELLANT.

vs.

## HARRY W. LUSKEY.

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APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

HARRY W. LUSKEY
*v.*
THE UNITED STATES. } No. 34,241.

## I. *Petition.*

Filed December 22, 1919.

*To the Honorable the Court of Claims:*

The claimant, Harry W. Luskey, respectfully represents:

I. The claimant was on the 15th day of September, 1915, a chief machinist's mate, United States Navy, and was by orders of the Secretary of the Navy designated for duty involving actual flying in aircraft, including balloons, dirigibles, and aeroplanes, and at once entered upon that duty at the U. S. naval aeronautic station, Pensacola, Florida, and continued on the same duty until February 1, 1917.

II. He was, in accordance with his orders and with the law, paid an increase of fifty per cent (50%) on his pay and allowances during the entire period during which he was on said duty.

At a later date, the amount so paid him for the period from July 1, 1916, to February 1, 1917, amounting to $329, was checked against him and withheld from subsequently accruing pay.

2 III. He made claim at a later date to the Auditor for the Navy Department, for the same and said Auditor for the Navy Department informed him that said claim would be allowed only for the months in which he actually made flights, which ruling of the auditor was based upon decisions of the Comptroller of the Treasury to that effect; whereby it became useless to continue the prosecution of his claim in the Treasury Department and left a suit in this court as his only remedy.

IV. He hereby claims an increase of 50 per cent on his pay and allowances for the period from July 1, 1916, to February 1, 1917, amounting to $329.

V. This claim is based among other statutes upon the act of March 3, 1915 (38 Stat. 939) providing for an increase of 50 per cent of pay and allowances to all officers and enlisted men lawfully detailed for duty involving actual flying in aircraft.

3 No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided,

abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims three hundred and twenty-nine dollars ($329).

KING & KING,
*Attorneys for Claimant.*

DISTRICT OF COLUMBIA *ss:*

George A King, being duly sworn, deposes and says: I am one of the attorneys for the claimant in this case. I have read the above petition, and the matters therein stated are true to the best of my knowledge and belief.

GEORGE A. KING.
(Signature of claimant.)

Subscribed and sworn to before me this 22d day of December, 1919.

[SEAL] MAY LOU H. BYINGTON,
(Official signature.)
*Notary Public, D. C.*
(Official title.)

4 II. *General traverse.*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

III. *Argument and submission of case.*

On October 31, 1921, this case was argued and submitted on merits by Mr. George A. King, for the plaintiff, and Mr. John G. Ewing for the defendant.

IV. *Findings of fact, conclusion of law and opinion of the Court by Hay, J. Entered November 7, 1921.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

*Findings of fact.*

I.

The plaintiff, Harry W. Luskey, chief machinist's mate, United States Navy, was, by authority of the commanding officer at Pensacola, Florida, confirmed by the Secretary of the Navy, detailed for duty involving actual flying in aircraft Sept. 15, 1915, and continued on that duty until after February 1, 1917. He was on duty at the Navy aeronautic station, Pensacola, Fla., until January 2, 1917, when he was transferred to a ship on aeronautic duty, to wit, to the U. S. S. "Seattle."

During all that time he was under orders detailing him for duty involving actual flying and made actual flights, one of which was in September, 1916, and two others in December, 1916, and was at all times capable of flying if so ordered.

II.

He received 50% additinoal pay allowed him by the act of March 3, 1915, in the sum of $329 for duty involving actual flying in aircraft for the entire period from July 1, 1916, to January 31, 1917, a period of seven months. At a later date the amount was checked against and deducted from his pay. On application to the accounting officers of the Treasury for such pay for that period he was allowed and paid a certain amount for the month of December, 1916.

If entitled to be paid 50% additional pay as chief machinist's mate, U. S. N., for aviation duty for the entire period, July 1, 1916, to January 31, 1917, less pay received for December, 1916, he would receive $279.95.

5 *Conclusion of law.*

Upon the facts found the court concludes, as matter of law, that the plaintiff is entitled to recover. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of two hundred and seventy-nine dollars and ninety-five cents ($279.95).

*Opinion.*

HAY, Judge, delivered the opinion of the court:

This is a suit brought by an enlisted man of the Navy to recover the sum of $279.95, which he alleges is due him by reason of his having been detailed to duty involving actual flying in aircraft under the provisions of the act of March 3, 1915, 38 Stat. 939, 940. The provisions of that act applicable to this case are: "Hereafter enlisted men of the Navy and Marine Corps, while detailed for duty involving actual flying in aircraft, shall receive the pay, and the permanent additions thereto, including allowances, of their rating and service or rank and service, as the case may be, plus fifty per centum increase thereof."

The plaintiff is an enlisted man and was lawfully detailed "for duty involving actual flying in aircraft." The Congress did not fix the pay on the number of times an enlisted man actually flew, nor on the number of days he was engaged in actual flying, but based it upon the time for which he was detailed necessarily involving him in actual flying. The word "involving" used in the statute may be inept, but its meaning in the connection in which it is used is plain and not to be mistaken, and that is, that the pay is not made dependent upon the number of flights while on such duty, but is made dependent on the detail to such duty. When, therefore, the plaintiff was lawfully detailed to duty involving actual flying in aircraft he must be regarded and treated as entitled to the consequences of such detail and to the pay provided for such duty.

We therefore conclude that when an enlisted man is detailed for duty involving actual flying in aircraft he is entitled to the pay

provided for in the statute during the time he is detailed for such duty from the day of such detail until the detail expires.

Judgment will be entered for the plaintiff in the sum of $279.95. It is so ordered.

GRAHAM, Judge; DOWNEY, Judge; BOOTH, Judge; and CAMPBELL, Chief Justice, concur.

V. *Judgment of the court.*

At a Court of Claims held in the City of Washington on the seventh day of November, A. D., 1921, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises find in favor of the plaintiff, and do order, adjudge, and decree that Harry W. Luskey, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of two hundred and seventy-nine dollars and ninety-five cents ($279.95).

By the COURT.

6 VI. *Proceedings after entry of judgment.*

On January 5, 1922, the defendant filed a motion for a new trial. This motion was overruled by the court January 9, 1922.

VII. *Defendant's application for and the allowance of an appeal.*

From the judgment rendered in the above-entitled cause on the 9th day of January, 1922, in favor of claimant, the defendant, by its Attorney General, on the 4th day of April, 1922, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
*Assistant Attorney General.*

Filed April 4, 1922.

Ordered: That the above appeal be allowed as prayed for. April 10, 1922.

By the COURT.

*Clerk's certificate.*

Court of Claims.

HARRY W. LUSKEY
*vs.*
THE UNITED STATES. } No. 34241.

I, F. C. Kleinschmidt, assistant clerk Courts of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the find-

ings of fact, conclusion of law and opinion of the Court by Hay, J.; of the judgment of the court; of the proceedings after the entry of judgment; of the defendant's application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this eleventh day of April, A. D., 1922.

[SEAL.]

F. C. KLEINSCHMIDT,
*Assistant Clerk Court of Claims.*

(Indorsed on cover:) File No. 28885. Court of Claims. Term No. 371. The United States, appellant, *vs.* Harry W. Luskey. Filed April 27th, 1922. File No. 28885.

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